

**MINUTES OF THE
STATE WATER DEVELOPMENT COMMISSION**
Tuesday, December 16, 2008 – 2:00 p.m. – Room C450 State Capitol

Members Present:

Rep. Patrick L. Painter, House Chair
Sen. Dennis E. Stowell, Senate Chair
Sen. Gene Davis
Sen. Mike Dmitrich
Sen. Scott K. Jenkins
Rep. Ben C. Ferry
Rep. Kerry W. Gibson
Rep. James R. Gowans
Rep. Brad King
Mr. Larry Anhder
Mr. Dallin Jensen
Mr. Darrell Mensel
Mr. Michael Mower
Mr. Warren Peterson
Mr. Bill Sinclair (representing Rick Sprott)
Mr. Michael Styler

Members Absent:

Commissioner Leonard Blackham
Mr. Don Christiansen
Mr. Tage Flint
Mr. Chris Fullmer
Mr. Brad Hancock
Rep. Michael E. Noel
Mr. Ron Thompson
Mr. David Ure

Staff Present:

Brian Allred, Policy Analyst
Emily R. Brown, Associate General Counsel
Joy L. Miller, Legislative Secretary

Note: A list of others present, a copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. Committee Business

Chair Painter called the meeting to order at 2:20 p.m. Commissioner Blackham, Mr. Christiansen, Mr. Flint, Mr. Fullmer, and Mr. Thompson were excused from the meeting.

MOTION: Sen. Davis moved to approve the minutes of the October 21, 2008 meeting. Rep. Ferry was absent for the vote.

2. Structure of the State Water Development Commission

Ms. Brown discussed "Title 73, Chapter 27, State Water Development Commission," which was included in the mailing packet. She indicated that in 2009 the Commission can no longer comply with the statute creating its membership since all Democratic senators will reside in one single river district.

MOTION: Sen. Davis moved to amend Subsection 73-27-102(2)(a) as follows: delete "one" and insert "two". The motion passed unanimously.

Ms. Brown was instructed to draft legislation to incorporate the proposed amendment. Rep. Painter indicated he would sponsor the bill. Sen. Davis will be the Senate sponsor.

3. Draft Legislation, "Mutual Benefit Corporation Amendments"

Rep. Painter distributed and reviewed 2009 General Session draft legislation, "Mutual Benefit Corporation - Judicial Liens." He explained that the bill imposes a 180-day limitation prior to a judicial lien being executed.

Mr. Peterson suggested amending the bill as follows: On line 43 after "180 days" insert "for such additional time as granted under Subsection (4)." After line 50, insert "(4) Additional time beyond the 180 days may be granted by the court in which the lien was created upon motion of an affected party."

Sen. Stowell requested that staff work with Rep. Painter on drafting the appropriate language.

Mr. Todd Bingham, Utah Farm Bureau, commented that it is wise to have a period to determine how an assessment might be levied without the loss of a water right. He expressed support for the principle.

MOTION: Mr. Styler moved to support 2009 General Session draft legislation, "Mutual Benefit Corporation - Judicial Liens," including the amendment language proposed by Mr. Peterson, giving staff the authority to amend the language while still representing the concept proposed by Mr. Peterson. The motion passed unanimously. Rep. Ferry was absent for the vote.

4. Draft Legislation, "Development Exactions"

Rep. Painter distributed and reviewed 2009 General Session draft legislation, "Development Exactions." The bill places limitations and restrictions on a county or municipality's imposition of an exaction for a water interest and requires culinary water authorities to provide the basis for their calculations of projected water right requirements.

MOTION: Rep. King moved to adopt 2009 General Session draft legislation, "Development Exactions" as a committee bill. The motion passed unanimously. Rep. Ferry was absent for the vote.

5. Collection and Use of Rainwater

Sen. Jenkins distributed the booklet "Rainwater Harvesting Products" to the Commission and discussed what is happening nationally to harvest rainwater. He stated this is a concept that the Commission will see more of in the future. Sen. Jenkins said he plans to introduce legislation on this issue.

6. Draft Legislation, "Resolution Revising Property Tax Exemption"

Rep. Painter distributed and reviewed 2009 General Session draft legislation, "Resolution Revising Property Tax Exemption." The bill proposes to change the constitution to add water treatment plants to the list of property exempt from property tax under a property tax exemption. The bill would also extend that property tax exemption to property used in the process of extracting and collecting water and delivering it within the state to the property of the final user of the water, including any storage and treatment of the water.

7. Executive Water Task Force Report

Mr. Mike Styler, Executive Director, Department of Natural Resources, reported on the actions of the Executive Water Task Force. He reviewed the legislation the Task Force supported that will be introduced in the upcoming general session. He discussed the idea of riders which the Task Force recommends be attached to land and water conveyances.

Mr. David Hartvigsen, Smith Hartvigsen, explained that the rider would not be recordable on its own. It would have to be incorporated into a deed with specific language.

Mr. Lee Brown, Tooele County Water Users, asked if the Division of Water Rights would be able to adopt the proposal by rule rather than require it to be proposed through legislation.

Ms. Brown said she would have to examine all the rulemaking authority authorized by the Legislature to the division to determine if one of those grants of authority is broad enough to incorporate the form. She noted that there is a recording statute that lists what can and cannot be recorded, which will also have to be amended.

8. Proposed Solution to Beryl/Enterprise Over Appropriation

Mr. Kurt Vest, Regional Engineer for Division of Water Rights, distributed a map and proposal entitled "Regional Ground Water Management Proposal." He outlined the proposal which would allow continued development of the water resources in the undeveloped basins in question. He noted that if all goes as planned, all basins would reach safe yield and water levels would stabilize.

Sen. Stowell stated that these valleys are not developed because of lack of infrastructure. He distributed and discussed "Water Policy Question." He said two methods exist to make excess water from open basins available to fulfill the needs of water right owners in closed basins when the basin has been over appropriated. These two methods are to build pipelines and/or canals and move the water or allow transfers of water rights from closed basins to open basins or to areas of excess surface water.

The Commission discussed the proposal.

Mr. Mike Brown, Escalante Valley Water Users, stated that the proposal could provide an economic relief and bears consideration. He asked the Commission to consider what could be done for the area to keep the community and its economics viable.

Mr. LaDel Laub, Escalante Valley Water Users, expressed appreciation for the proactive approach being discussed. He questioned granting a new water right if an old one is being cut off. He indicated that cutting off water rights in today's circumstances would be drastic.

Mr. Boyd Clayton, Acting State Engineer, said the policy has been to make public water available to people who are willing to put it to beneficial use. The proposal being discussed is committing water not being used to private individuals - there is no cost to the water. He said first in time is first in right. There are always shortages, that is the nature of the system.

9. Discussion of Water Rights Forfeiture

Sen. Stowell stressed the need to study the issue of forfeiture. He distributed "Selected States' Water Forfeiture Law," "Utah's Statutory Exemptions to Water Right Forfeiture," "Sample Water Right Forfeiture Exemptions," "Selected States' Water Forfeiture Exemptions," and "'Safe Yield' Definitions from Selected States."

10. Other Business / Adjourn

Rep. Painter asked that the Commission send a letter to Jerry Olds, retiring State Engineer, commending him on his 36 years of service and wishing him well in his retirement.

Sen. Stowell requested that a letter also be sent to those members of the Commission that will not be returning next year.

Chair Painter adjourned the meeting at 4:25 p.m.